

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS

GALVESTON DIVISION

DIVISION 80 LLC,

Plaintiff,

v.

MERRICK GARLAND,
in his official capacity as
Attorney General of the United States,

Case No. 3:22-CV-00148

UNITED STATES DEPARTMENT OF
JUSTICE,

STEVEN DETTELBACH,
in his official capacity as
Director of the Bureau of Alcohol,
Tobacco, Firearms, and Explosives,

BUREAU OF ALCOHOL, TOBACCO,
FIREARMS, AND EXPLOSIVES,

Defendants.

**PLAINTIFF'S SUPPLEMENTAL BRIEF IN SUPPORT OF
PRELIMINARY INJUNCTION**

Since this Court held its preliminary-injunction hearing on August 9, 2022, new factual developments have occurred that warrant the Court’s attention.

A few days ago, FedEx announced that starting on August 24, 2022, it will no longer ship “items that may be completed, assembled, restored, or otherwise converted to function as a firearm frame or receiver.”¹ Mr. Padilla testified at his deposition that Division 80 ships its products through FedEx. Exhibit 36.² Counsel has also learned that credit card payment processing companies are cutting off services for the manufacturer of Division 80’s products on August 24, 2022. Exhibit 37 (claiming that “gun parts” must have a serial number). Notwithstanding the aid presented by the government that certain frame and receiver blanks would not be subjected to the new legal requirements under the proposed Rule, these drastic actions reflect that many companies apparently do not readily understand these distinctions—as represented for the first time by the government at the hearing—and apparently believe that the Final Rule potentially criminalizes the sale and shipment of unserialized frame and receiver blanks of the sort sold by Division 80.

¹ https://twitter.com/keegan_hamilton/status/1560055875938557952

² Division 80 designated Mr. Padilla’s deposition as confidential but hereby waives confidentiality with respect to the attached excerpt only.

Due to the ambiguity and potential risk of committing a crime, in the absence of a preliminary injunction, the entire partially complete frame and receiver blank industry will be forced to cease operations not only because of the Final Rule's effects on industry, but also because of its effects on the various businesses that provide basic services the industry needs to operate. If sellers of partially complete frame and receiver blanks cannot even collect payments and ship products to stay in business, *they will be totally wiped out and denied the ability to have their day in court to obtain a final judgment concerning the rule's lawfulness.*

Additionally, the Court asked during the hearing if other cases challenging the Final Rule had been filed. Counsel identified one other matter in the District of North Dakota: *Morehouse Enterprises LLC v. ATF*, No. 3:22-CV-00116 (D.N.D.). Since the hearing, another lawsuit challenging the Final Rule has been filed in the Northern District of Texas: *VanDerStok v. Garland*, No. 4:22-CV-00691 (N.D. Tex.).

Finally, Defendants recently released a set of "corrections" to the Final Rule that are scheduled to be published in the Federal Register on August 22, 2022. Exhibit 38.³ Though there are some corrections that appear merely

³ <https://www.federalregister.gov/documents/2022/08/22/2022-17741/definition-of-frame-or-receiver-and-identification-of-firearms-corrections>

typographical, there are some potentially substantive changes that counsel has not yet had an opportunity to fully analyze.

As Division 80 stated in its preliminary-injunction motion, this Court could order a brief delay of the Final Rule's effective date—to allow reasonable time to analyze recently announced corrections to the Final Rule and to continue deliberating on the pending motion—should the Court deem it necessary.

Respectfully submitted,

Michael J. Sullivan
Massachusetts Bar No. 487210
Admitted Pro Hac Vice
ASHCROFT LAW FIRM LLC
200 State Street, 7th Floor
Boston, MA 02109
Phone: (617) 573-9400
Fax: (703) 247-5446
Email: msullivan@ashcroftlawfirm.com

/s/ Cory R. Liu
Cory R. Liu
Attorney-in-Charge
Texas Bar No. 24098003
S.D. Texas Bar No. 3047640
ASHCROFT LAW FIRM LLC
919 Congress Ave., Ste. 1325
Austin, TX 78701
Phone: (512) 370-1800
Fax: (703) 247-5446
Email: cliu@ashcroftlawfirm.com

Certificate of Service

I certify that a true and accurate copy of the foregoing document was filed electronically (via CM/ECF) on August 20, 2022.

/s/ Cory R. Liu
Cory R. Liu